

Regular Session, 2010

SENATE BILL NO. 635

BY SENATOR LONG

WEIGHTS/MEASURES. Provides with respect to DOTD stationary scale and mobile police transfer of authority. (7/1/10)

AN ACT

To amend and reenact R.S. 32:1(1), (10) and (93.1), 2(D) and (E), 3(C), 388(A)(3), the introductory paragraph of (B)(1)(a), (B)(4)(a), (C)(3), (F) and (G), 388.1, 389, 390.23(A), and 392(A)(1), R.S. 36:408(B)(3) and 409(C)(8), R.S. 40:1379.8, and R.S. 47:511.1(B), (C), (D), and (E), 516(A), (B)(2), and (D), 718(B)(1) and (C) and 812(C), and to repeal R.S. 32:1(93) and 2(B) and (C), relative to weights and standards; to transfer the operation and maintenance of stationary weight enforcement scale locations from the Department of Transportation and Development to the Department of Public Safety and Corrections; to provide for authority of the Department of Transportation and Development; to provide for the authority of the Department of Public Safety and Corrections; to provide for definitions; to provide for penalties and payments; to provide for enforcement, payment, and collections procedures; to provide for administrative review; to provide for transition; to provide for effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 32:1(1), (10) and (93.1), 2(D) and (E), 3(C), 388(A)(3), the introductory paragraph of (B)(1)(a), (B)(4)(a), (C)(3), (F) and (G), 388.1, 389, 390.23(A),

and 392(A)(1) are hereby enacted to read as follows:

§1. Definitions

When used in this Chapter, the following words and phrases have the meaning ascribed to them in this Section, unless the context clearly indicates a different meaning:

(1) "Authorized emergency vehicle" means a vehicle of a fire department, a vehicle of the ~~department's~~ weights and standards police force, a police vehicle, a privately owned vehicle belonging to members of an organized volunteer fire department or fire district when so designated or authorized by the fire chief of that fire department or fire district, an industrial-owned vehicle assigned to members of a fire department or fire district when so designated or authorized by the fire chief of that fire department or fire district, a vehicle parked or stopped by elevator repair or construction personnel while responding to an elevator emergency, such ambulances and emergency medical response vehicles certified by the Department of Health and Hospitals that are operated by certified ambulance services, and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the secretary of the Department of Transportation and Development or by the chief of police of any incorporated municipality. For purposes of this Section, elevator repair shall be limited to those elevators that move people.

* * *

(10) "Commissioner" means the deputy secretary of the Department of Public Safety and Corrections, **public safety services**.

* * *

(93.1) "Weights and standards ~~stationary-scale~~ police officer" means an employee of the Department of ~~Transportation and Development~~ **Public Safety and Corrections, public safety services**, authorized to enforce the provisions of R.S. 32:380 through 389 **388.1, both inclusive R.S. 32:390, R.S. 47:718, Chapter 4 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, the access laws**

1 **and regulations relative to controlled access highways** and certain other specified
2 statutes and regulations **determined by the deputy secretary of the Department**
3 **of Public Safety and Corrections, public safety services, or by** of the Department
4 of Transportation and Development.

5 * * *

6 §2. Authority of Department of Transportation and Development

7 * * *

8 D. The ~~Department of Transportation and Development~~ **department** shall
9 have sole authority over the issuance of special permits as set forth in R.S. 32:387.
10 **The commissioner may facilitate the issuance of permits by the department's**
11 **truck permit office to place a vehicle or load in compliance with law.**

12 E. The ~~secretary of the Department of Transportation and Development,~~
13 ~~through the office of the weights and standards police force,~~ **commissioner** shall
14 provide the personnel and equipment required to fully implement the provisions of
15 ~~R.S. 32:390.23~~ **the Louisiana Truck Center, Part VI-B of Chapter 1 of Title 32**
16 **of the Louisiana Revised Statutes,** as it relates to the assessment and collection of
17 fees and taxes of this department. **Any money made available and received from**
18 **the Federal Highway Administration, or from any other entity for the purpose**
19 **of maintaining, improving, or upgrading the stationary or mobile scales shall**
20 **be used solely for such purpose. The commissioner shall be responsible for**
21 **maintenance of the buildings and grounds and the stationary scales at**
22 **stationary scale locations. The department shall be responsible for the**
23 **maintenance of the roadways and parking lots at the stationary scale locations.**

24 * * *

25 §3. Authority of Department of Public Safety and Corrections

26 * * *

27 C. **The Weights and Standards Police Force is hereby created within the**
28 **Department of Public Safety and Corrections, public safety services. It may**
29 **enforce the provisions of R.S. 32:380 through 388.1, R.S. 32:390, R.S. 47:718,**

Chapter 4 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, the access laws and regulations relative to controlled access highways and certain other specified statutes and regulations determined by the deputy secretary of the Department of Public Safety and Corrections, public safety services.

Members of the Weights and Standards Mobile Police Force ~~are~~ may be authorized to carry weapons and to make arrests in the enforcement of these laws and regulations, ~~and in that regard, shall~~ may have the same authority and powers conferred by law upon other law enforcement officers of ~~this state~~ the Department of Public Safety and Corrections upon being duly commissioned as a peace officer by the deputy secretary of the Department of Public Safety and Corrections, public safety services; however, no member of the Weights and Standards Mobile Police Force shall be authorized to carry a weapon until the member has received P.O.S.T. certification training and upon being duly commissioned as a peace officer by the deputy secretary of the Department of Public Safety and Corrections, public safety services.

* * *

§388. Penalties; payments

A. * * *

(3) Each vehicle that is required to stop at a ~~department stationary~~ weight enforcement scale location and which fails to stop shall be assessed the following penalty:

(a) Vehicles with a gross vehicle weight rating of less than twenty-six thousand pounds shall be ~~fin~~ penalized one hundred dollars for failure to stop at ~~the department stationary a weight scales~~ scale. This ~~fine~~ penalty shall be in addition to any other ~~fin~~ penalties which may be assessed for other violations.

(b) Vehicles with a gross vehicle weight rating of twenty-six thousand pounds or more shall be ~~fin~~ penalized five hundred dollars for failure to stop at ~~the department stationary a weight scales~~ scale. This ~~fine~~ penalty shall be in addition to any other ~~fin~~ penalties which may be assessed for other violations.

1 (4) Any vehicle which inadvertently bypasses ~~the department stationary~~
2 weight scales and returns to the scales voluntarily without the assistance of law
3 enforcement shall not be assessed any penalty for bypassing the ~~scales~~ scale.

4 B.(1)(a) Except as provided in Subparagraphs (b), and (c), ~~and (d)~~, whoever
5 owns or operates any vehicle or combination of vehicles in violation of any rule,
6 regulation, directive, or requirement ~~of the secretary~~ adopted under R.S. 32:386 or
7 in violation of R.S. 32:386 shall be required to reduce the load to the maximum
8 permissible gross weight and shall be assessed a penalty on such weight which
9 exceeds the maximum permissible gross weight as defined by R.S. 32:386 or
10 maximum allowable axle weights, whichever results in the higher fine, in accordance
11 with the following schedule:

12 * * *

13 (4)(a) Whoever owns any business entity engaged in the sale or shipment of
14 construction aggregates requiring a ~~weighmaster~~ weigh master, not including
15 asphalt, or transfer sales or shipment from rail, barge, or ship to wholesale stockpiles
16 or inventories within a five-mile radius of the point where the shipment was
17 transferred, who violates, or whose driver or contract driver violates any rule,
18 regulation, directive, or requirement ~~of the secretary~~ adopted under R.S. 32:386 or
19 violates R.S. 32:386 shall also be assessed a separate penalty for each violation in
20 accordance with the schedule set forth in ~~Paragraph~~ Subsection B(1) of this Section.
21 However, notwithstanding any other provision of this Chapter or any law to the
22 contrary, any such business, or ~~weighmaster~~ weigh master thereof, who releases a
23 vehicle that is within the maximum permissible gross weight limitations for travel
24 on a state highway shall not be assessed any penalty when said vehicle is found in
25 violation of gross maximum weight limitations while traveling on any interstate
26 highway. For purposes of enforcing this ~~Paragraph~~ Subsection, any weights and
27 standards ~~and or~~ state policeman having reason to believe that such owner is in
28 violation of R.S. 32:386 is authorized to enter and go upon, without formal warrant,
29 any vehicle, stand, place, building, or premises, for the purpose of inspecting only

the shipping ticket or tickets issued in connection with the particular load found in violation of R.S. 32:386 by ~~the~~ any W weights and S standards or state P policeman in order to determine whether such sales at the origin of shipment contain the amounts represented and are offered for sale or sold in a manner in accordance with law. The discovery of an overweight vehicle after proper weighing shall constitute "reason to believe" for purposes of this ~~Paragraph~~ Subsection.

* * *

C.

* * *

(3) Nothing contained in this Subsection shall authorize the ~~department~~ commissioner or any weights and standards or state policeman to assess any penalty provided for herein for both the failure to possess a required special permit and for operating a vehicle in violation of R.S. 32:386 when arising out of the same activity, and to this extent the penalties provided for in this Subsection shall not be cumulative in nature.

* * *

F. Payments for penalties imposed by ~~the Department of Transportation and Development and the Department of Public Safety and Corrections,~~ public safety services, shall be remitted to the Transportation Trust Fund. However, any payments for citations for weight limit violations on parish roads in a parish shall be paid to the public works department of said parish.

G.(1) All of such penalties collected by ~~the secretary and~~ the commissioner shall be paid into the state treasury on or before the twenty-fifth day of each month following their collection and, in accordance with Article VII, Section 9 of the Constitution of Louisiana, shall be credited to the Bond Security and Redemption Fund. However, after a sufficient amount of the penalties collected by ~~the secretary~~ and the commissioner is allocated from the fund to pay all obligations secured by the full faith and credit of the state within any fiscal year, the treasurer shall pay an amount equal to the fees paid into the Bond Security and Redemption Fund pursuant to this Paragraph into the Transportation Trust Fund created under Article VII,

1 Section 27 of the Constitution of Louisiana.

2 (2) The ~~department~~ **Department of Public Safety and Corrections, public**
3 **safety services,** shall keep a set of books showing from whom every dollar is paid
4 and for what purpose. It also shall keep in its file vouchers or receipts for all monies
5 paid out.

6 §388.1. Penalties; multiple violations

7 Whoever owns or drives any vehicle or combination of vehicles in violation
8 of two or more of the provisions of this Part at any one time shall be assessed the
9 greater or the greatest of the penalties, in the full amount of the penalty. The
10 ~~department~~ **commissioner** is hereby authorized to promulgate rules and regulations
11 to provide that in addition to assessment of the greater or greatest penalty, the owner
12 or driver shall be assessed a penalty not to exceed ten dollars for each other violation
13 committed at the same time; however, such rules and regulations shall only be
14 promulgated provided the Federal Highway Administration initiates official
15 sanctions which would result in the loss of National Highway System apportionment
16 or other federal funds should such penalties for multiple violations not be provided.

17 * * *

18 §389. Weights and standards police; enforcement procedure; payment and collection
19 procedures; administrative review

20 A. The weights and standards police force and the state police shall have
21 concurrent authority to enforce the provisions of R.S. 32:380 through 388. **1 and R.S.**
22 **32:390.**

23 B. Any weights and standards police officer having reason to believe that any
24 vehicle or combination of vehicles exceeds or is in violation of the provisions of R.S.
25 32:380 through R.S. 32:386 **or R.S. 32:388.1 through R.S. 32:390,** or the terms and
26 conditions of a special permit issued under R.S. 32:387 or regulations of **either** the
27 ~~department or secretary~~ **Department of Transportation and Development or the**
28 **Department of Public Safety and Correction, public safety services,** adopted
29 pursuant to this Part, is authorized to stop such vehicle or combination of vehicles

1 and to inspect, measure, or weigh such vehicle, either by means of portable or
2 stationary scales, or to require that such vehicle be driven to the nearest available
3 location equipped with facilities to inspect, measure, or weigh such vehicle.

4 (1) Any state policeman having reason to believe that any vehicle or
5 combination of vehicles exceeds or is in violation of the provisions of R.S. 32:380
6 through 32:386 **or R.S. 32:388.1 through R.S. 32:390,** or the terms and conditions
7 of a special permit issued under R.S. 32:387 or regulations ~~of the department or~~
8 ~~secretary~~ adopted pursuant to this Part is authorized to stop such vehicle or
9 combination of vehicles and to inspect or measure such vehicle or to require that
10 such vehicle be driven to the nearest available location equipped with facilities to
11 inspect or measure such vehicle, provided that any state policeman having reason to
12 believe that any vehicle or combination of vehicles exceeds or is in violation of the
13 provisions of R.S. 32:386, any overweight special permit as provided in R.S. 32:387,
14 or the ~~department's~~ regulations adopted pursuant thereto, may escort such vehicle to
15 the nearest permanent or portable scale operated by the ~~department's~~ weights and
16 standards police force, where a weights and standards police officer shall weigh such
17 vehicle and if such vehicle is overweight, is in violation of an overweight special
18 permit, or the department's or secretary's regulations adopted pursuant thereto, shall
19 issue a violation ticket in accordance with Subsection C of this Section.

20 C.(1) ~~Whenever any vehicle or combination of vehicles is found in violation~~
21 ~~of any provision of this Part or any regulation of the department or secretary adopted~~
22 ~~pursuant thereto, the weights and standards police officer or any state policeman~~
23 ~~shall take the name and address of the owner and driver and the license number of~~
24 ~~the vehicle and shall issue a violation ticket assessing a penalty for such violation in~~
25 ~~accordance with R.S. 32:388.~~

26 (2) ~~Upon issuance of the violation ticket, an owner or driver who is a resident~~
27 ~~of Louisiana or who has a domicile in Louisiana shall receive notification from the~~
28 ~~weights and standards stationary scale police officer that the penalty shall be paid~~
29 ~~within thirty days of issuance of the violation ticket or that the owner or driver may~~

1 ~~request an agency review of the penalty within thirty days of issuance of the~~
2 ~~violation ticket. An owner or driver who is not a resident of Louisiana or who does~~
3 ~~not have a domicile in Louisiana shall receive notification from the weights and~~
4 ~~standards stationary scale police officer that the penalty shall either be paid at the~~
5 ~~time the violation ticket is issued or he shall post a bond equal to the amount of the~~
6 ~~penalty, which bond shall be forfeited if, within thirty days of issuance of the~~
7 ~~violation ticket, the penalty has not been paid or an agency review has not been~~
8 ~~requested. The owner or driver shall pay the penalty assessed with certified check,~~
9 ~~cashier's check, money order, or department-approved credit card. The secretary may~~
10 ~~establish credit accounts for violators, if each violator provides the department a cash~~
11 ~~deposit in the minimum amount of five thousand dollars or any amount in excess~~
12 ~~thereof fixed by the secretary to guarantee payment of said account. The department~~
13 ~~shall not detain or impound any vehicle issued a violation ticket for any violation of~~
14 ~~the provisions of R.S. 32:380 through 387 prior to the final disposition of the~~
15 ~~violation ticket if the owner or driver is a resident of Louisiana or has a domicile in~~
16 ~~Louisiana, or has paid the penalty or posted the bond in accordance with this Section.~~
17 ~~For purposes of this Section, "final disposition" shall be defined as a final conviction,~~
18 ~~not capable of appeal or review.~~

19 ~~(3)(a) If a driver of a motor vehicle who is a resident of Louisiana or who has~~
20 ~~a domicile in Louisiana is determined to be the responsible party for the violation~~
21 ~~ticket by the Department of Transportation and Development or the office of state~~
22 ~~police, the driver shall be responsible for the payment of all fines and fees associated~~
23 ~~with issuance of the violation ticket. If the department or the office of state police~~
24 ~~fails to receive payment of the violation ticket within sixty calendar days of issuance~~
25 ~~of the violation ticket or within sixty calendar days of receiving a notice of final~~
26 ~~judgment from the agency or administrative review, the department or the office of~~
27 ~~state police shall transmit the driver's license number to the office of motor vehicles.~~
28 ~~Upon receipt of the driver's license number, the office of motor vehicles shall~~
29 ~~immediately notify the driver, by first class mail, that his driver's license shall be~~

1 ~~suspended thirty calendar days after the date of mailing the notice unless all fines~~
2 ~~and fees associated with the violation ticket are paid in full together with notice of~~
3 ~~the imposition of a fifty-dollar fee by the office of motor vehicles to cover its~~
4 ~~administrative costs. Upon payment of all fines and fees associated with the violation~~
5 ~~ticket, the office of motor vehicles shall immediately authorize the reinstatement of~~
6 ~~the driver's license.~~

7 ~~(b) If a motor carrier is determined by the Department of Transportation and~~
8 ~~Development or the office of state police to be the responsible party for a violation~~
9 ~~ticket, and if such party fails to pay the assessed penalty within sixty calendar days~~
10 ~~of receiving the violation ticket or within sixty calendar days of receiving a notice~~
11 ~~of final judgment from the agency or administrative review, the department or the~~
12 ~~office of state police shall transmit the vehicle identification number of the offending~~
13 ~~vehicle for which the violation ticket was issued to the office of motor vehicles. The~~
14 ~~office of motor vehicles shall not renew the registration of the offending vehicle until~~
15 ~~all fines and fees associated with the violation ticket are paid in full. Upon payment~~
16 ~~of all fines and fees associated with the violation ticket, the office of motor vehicles~~
17 ~~shall immediately authorize renewal of the vehicle's registration. The Department of~~
18 ~~Transportation and Development and the office of state police shall adopt rules and~~
19 ~~regulations in accordance with the Administrative Procedure Act, subject to~~
20 ~~oversight by the House and Senate Committees on Transportation, Highways and~~
21 ~~Public Works, as are necessary to implement the provisions of this Subparagraph.~~

22 ~~(c) The Department of Transportation and Development and the office of~~
23 ~~state police shall be prohibited from seizing the registration license plate of a motor~~
24 ~~vehicle for failing to pay a fine for a violation ticket.~~

25 ~~(4)(a) Any owner or driver who pays an assessed penalty in accordance with~~
26 ~~the provisions of this Section shall have a period of ninety days after the date of~~
27 ~~payment to institute a civil suit against the department to recover the penalty so paid.~~
28 ~~However, the ninety-day time period to institute a civil suit against the department~~
29 ~~shall be suspended for any owner or driver who timely requests an agency review in~~

1 ~~accordance with the provisions of this Section, in which case the owner or driver~~
2 ~~shall have a period of ninety days after the final disposition of the agency review to~~
3 ~~institute a civil suit against the department to recover the penalty so paid.~~

4 ~~(b) The right to sue for recovery of a penalty paid shall afford a legal remedy~~
5 ~~and right of action in any state district court for a full and complete adjudication of~~
6 ~~any questions arising in the enforcement of a penalty respecting the legality of any~~
7 ~~penalty assessed or the method of enforcement thereof. Any such suit may be~~
8 ~~instituted either in the parish in which the violation occurred, the domicile of~~
9 ~~vehicles, provided the domicile is within the state of Louisiana, or in East Baton~~
10 ~~Rouge Parish. In any such suit, service of process shall be made on the department,~~
11 ~~through the secretary. The department shall be a necessary and proper party~~
12 ~~defendant in any such suit.~~

13 ~~(5) No court of this state shall issue any process whatsoever to restrain the~~
14 ~~collection of any penalty assessed by the department pursuant to this Part.~~

15 ~~(6) If upon expiration of the ninety-day period provided in Paragraph (4)(a)~~
16 ~~of this Subsection any penalty assessed remains unpaid, the department may institute~~
17 ~~a civil suit in the parish in which the violation occurred or in the domicile of the~~
18 ~~owner or driver to collect any penalty assessed but unpaid. The department shall~~
19 ~~have one year from the date of expiration of the ninety-day period to institute such~~
20 ~~a suit.~~

21 ~~(7) Notwithstanding the above provisions, any member of the armed forces,~~
22 ~~who is in uniform or presents an order for duty and who is operating a military~~
23 ~~vehicle in the line of duty in violation of any provision of R.S. 32:380 through R.S.~~
24 ~~32:387 or any regulation of the department or secretary adopted pursuant thereto~~
25 ~~shall not be required to pay the penalty assessed, nor shall he be required to surrender~~
26 ~~his Louisiana driver's license. However, the owner of the vehicle or the federal~~
27 ~~government shall pay the penalty within thirty days.~~

28 ~~(8) Failure of any vehicle or combination of vehicles to stop at a weigh~~
29 ~~facility may be excused if stopping the vehicle or combination of vehicles would~~

1 create a serious traffic hazard. The Department of Transportation and Development
2 shall promulgate rules under the provisions of the Administrative Procedure Act for
3 the implementation of this Paragraph. Such rules shall define "serious traffic hazard"
4 and shall authorize the use of green traffic signal lights to allow vehicles to pass the
5 weigh facility at such times as vehicles have accumulated on the entrance ramp to
6 the weigh facility to the extent that the vehicles present a traffic hazard. Rules
7 adopted hereunder shall be subject to oversight by the House and Senate Committees
8 on Transportation, Highways and Public Works.

9 D.(1) The secretary shall establish a procedure for agency review of violation
10 tickets issued by weights and standards stationary scale police officers and may take
11 appropriate actions based on the findings of the agency's review. The secretary shall
12 adopt rules in accordance with the Administrative Procedure Act to govern agency
13 review and any actions taken based on the findings of the agency.

14 (2) Following conclusion of the agency's review, the operator or responsible
15 party issued the violation ticket by the weights and standards stationary scale police
16 officer may request a hearing conducted by a review panel comprised of five
17 members. One member of the review panel shall be appointed by the secretary of the
18 Department of Transportation and Development, two members shall be appointed
19 by the chairman of the House Transportation, Highways and Public Works
20 Committee, and two members shall be appointed by the chairman of the Senate
21 Transportation, Highways and Public Works Committee. Decisions of the review
22 panel shall be binding upon the Department of Transportation and Development. The
23 secretary shall adopt rules and regulations in accordance with the Administrative
24 Procedure Act regarding the hearing conducted by the review panel including but not
25 limited to rules and regulations regarding the notification and procedure for
26 requesting a hearing by the review panel and deadlines for request for a hearing
27 before the review panel.

28 Whenever any carrier, common carrier, contract carrier, private carrier,
29 transport vehicle, or driver is found in violation of any provision of this

1 Chapter, commissioner shall send the responsible party a "Notice of Violation,
2 Proposed Finding and Proposed Civil Penalty", hereafter referred to as a
3 "notice of violation", within thirty calendar days of the violation.

4 (2)(a) Each notice of violation shall clearly indicate if a monetary
5 penalty is assessed for the violation or if the notice of violation is only a warning.
6 When a monetary penalty is assessed, each notice of violation shall be sent to
7 the responsible party by certificate of mailing. Such notice of violation shall
8 also contain notice that the responsible party shall have forty-five calendar days
9 from the date of issuance of the notice of violation to either pay the monetary
10 penalty for the violation or to request, in writing, an administrative hearing to
11 review the notice of violation. When the amount of the civil penalty is negotiated
12 between the commissioner and the responsible party, the commissioner shall
13 send written notification to the responsible party of the amount of the
14 negotiated civil penalty within thirty calendar days of the date of the final
15 negotiation. Such payment shall be made by certified check, money order, or
16 credit card. If made by credit card, the payment shall be deemed received by
17 the commissioner when tendered and an approval code is obtained from the
18 credit card company or credit card processor.

19 (b) The commissioner shall adopt rules and regulations in accordance
20 with the Administrative Procedure Act, subject to oversight by the House and
21 Senate committees on transportation, highways and public works as are
22 necessary regarding the administrative hearing, including but not limited to
23 rules and regulations regarding notification and the procedure for requesting
24 a hearing provided such rules shall not conflict with the provisions of R.S.
25 32:388.1.

26 (3) If the commissioner fails to issue the notice of violation to the
27 responsible party within thirty calendar days of the violation in accordance with
28 the provisions of this Section, the violation shall be dismissed. However, the
29 commissioner shall be granted an additional sixty calendar days to send the

1 responsible party a notice of violation in accordance with the provisions of this
2 Section if he experiences a data system failure caused by either an act of God
3 or an intentional act of sabotage.

4 (4) Any appeal of the findings of the administrative law judge shall be
5 filed in a state district court with proper venue over the matter.

6 D.(1) If a carrier is determined to be the responsible party for a notice
7 of violation by the commissioner and, if such carrier fails to pay the assessed
8 penalty within forty-five calendar days of issuance of the notice of violation, or
9 in the case of an administrative hearing, the responsible party fails to pay the
10 assessed fine within thirty calendar days of receiving a notice of final judgment
11 from the administrative law judge, the outstanding penalty amount shall be
12 posted on the commissioner's official web site. The outstanding penalty amount
13 for such responsible party shall continue to appear on the web site until all fines
14 and fees are paid in full. The commissioner shall transmit the vehicle
15 identification number of the offending vehicle for which the notice of violation
16 was written to the office of motor vehicles. The office of motor vehicles shall not
17 renew the registration of the offending vehicle until all fines and fees associated
18 with the notice of violation have been paid in full. Within seven calendar days
19 of receiving documentation from the responsible party that all fines and fees
20 have been paid in full, the commissioner shall remove the posting of the notice
21 of violation from his web site. Additionally, upon payment of all fines and fees
22 associated with the notice of violation, the office of motor vehicles shall
23 immediately authorize renewal of the vehicle's registration. Such payment shall
24 be made by certified check, money order, or credit card. If made by credit card,
25 the payment shall be deemed received by the commissioner when tendered and
26 an approval code is obtained from the credit card company or credit card
27 processor.

28 (2) If the driver of a motor vehicle is found to be the responsible party
29 for a notice of violation by the commissioner, the driver shall be responsible for

1 the payment of all fines and fees associated with issuance of the notice of
2 violation. Such payment shall be made by certified check, money order, or
3 credit card. If made by credit card, the payment shall be deemed received by
4 the commissioner when tendered and an approval code is obtained from the
5 credit card company or credit card processor. If the commissioner fails to
6 receive payment within forty-five calendar days of issuance of the notice of
7 violation, or in the case of an administrative hearing, the responsible party fails
8 to pay the assessed penalty within thirty calendar days of receiving a notice of
9 final judgment from the administrative law judge, the commissioner shall
10 transmit the driver's license number to the office of motor vehicles. Upon
11 receipt of the driver's license number, the office of motor vehicles shall
12 immediately notify the driver, by first class mail, that his driver's license shall
13 be suspended thirty calendar days after the date of mailing the notice unless all
14 fin es and fees associated with the notice of violation or final judgment from the
15 administrative law judge are paid in full together with notice of the imposition
16 of a fifty-dollar fee by the office of motor vehicles to cover its administrative
17 costs. The driver's license shall remain suspended until all fines and fees
18 associated with the notice of violation or final judgment from the administrative
19 law judge and the fifty-dollar fee for the office of motor vehicles are paid in full.
20 Upon payment of all fines and fees, the office of motor vehicles shall
21 immediately authorize the reinstatement of the driver's license.

22 (3) Motor carriers shall not be responsible for driver violations.

23 E.(1) The commissioner and any law enforcement officer working for
24 the commissioner shall be prohibited from seizing a motor vehicle or the
25 registration license plate of a motor vehicle for failing to pay a fine for a notice
26 of violation.

27 (2) In the event a motor vehicle for which a notice of violation has been
28 issued is subsequently sold, the new owner of such vehicle shall not be
29 responsible for any outstanding fines or fees associated with a notice of

1 violation. The new owner of the motor vehicle shall present proper
2 documentation to the commissioner evidencing the lawful transfer of ownership.

3 F. During a state of emergency declared by the governor, the
4 commissioner shall be granted an additional sixty calendar days to send the
5 responsible party a notice of violation in accordance with the provisions of this
6 Section. Such extension of time shall terminate not later than sixty days from
7 the date the state of emergency ends.

8 G. Notwithstanding the provisions of this Section, any member of the
9 armed forces, who is in uniform or presents an order for duty and who is
10 operating a military vehicle in the line of duty in violation of any provision of
11 R.S. 32:380 through R.S. 32:387, or any regulation adopted pursuant thereto,
12 shall not be required to pay the penalty assessed, nor shall such member be
13 required to surrender his Louisiana driver's license. However, the owner of the
14 vehicle or the federal government shall pay the penalty within thirty days.

15 H. The failure of any vehicle or combination of vehicles to stop at a weigh
16 facility may be excused if stopping the vehicle or combination of vehicles creates
17 a serious traffic hazard. The commissioner shall promulgate rules under the
18 provisions of the Administrative Procedure Act to implement the provisions of
19 this Subsection. Such rules shall define "serious traffic hazard" and shall
20 authorize the use of green traffic signal lights to allow vehicles to pass the weigh
21 facility at such times as vehicles have accumulated on the entrance ramp to the
22 weigh facility to the extent that the vehicles present a traffic hazard. Rules
23 previously adopted by the department shall remain in full force and effect until
24 such time as the commissioner promulgates rules pursuant to this Subsection.
25 Rules adopted hereunder shall be subject to oversight by the House and Senate
26 committees on transportation, highways and public works.

27 * * *

28 §390.23. Agency representatives

29 A. Located within the truck center shall be representatives of the following

1 agencies:

2 (1) The Public Service Commission.

3 (2) The Department of Public Safety and Corrections, public safety services.

4 (3) The Department of Revenue.

5 (4) The Department of Transportation and Development, ~~office of weights~~
6 ~~and standards.~~

7 * * *

8 §392. Impounding of vehicles; prohibitions

9 A.(1) Upon discovery of any vehicle operated in violation of this Chapter, the
10 vehicle shall not be impounded but shall be directed to and followed by the weights
11 and standards police officer or state policeman to the nearest appropriate place
12 suitable for unloading to its licensed gross weight or maximum size requirements as
13 provided in this Chapter and storage of said product to preserve it for its intended use
14 in commerce and in either case shall be detained or unloaded at the expense and
15 responsibility of the owner or driver. The ~~department~~ **commissioner** shall not detain
16 or impound any vehicle issued a violation ticket for any violation of the provisions
17 of R.S. 32:380 through 387 prior to the final disposition of the violation ticket ~~if the~~
18 ~~owner or driver is a resident of Louisiana or has a domicile in Louisiana, or has paid~~
19 ~~the penalty or posted the bond in accordance with the provisions of R.S. 32:389(C).~~
20 ~~For purposes of this Section, "final disposition" shall be defined as a final conviction,~~
21 ~~not capable of appeal or review.~~

22 * * *

23 Section 2. R.S. 36:408(B)(3) and 409(C)(8) are hereby amended and reenacted to
24 read as follows:

25 §408. Offices; purposes and functions

26 * * *

27 B.

* * *

28 (3) Within the ~~office of state police~~ **Department of Public Safety and**
29 **Corrections, public safety services,** there shall be a Weights and Standards ~~Mobile~~

Police Force (~~R.S. 40:1379.8~~) which shall perform the functions of the state related to the enforcement of R.S. 32:380 through ~~389~~ **388, R.S. 32:388.1, R.S. 32:390**, and R.S. 47:718, and the provisions of Chapter 4 of Subtitle II of Title 47 relating to trucks, trailers, and semitrailers and Part V of Chapter 7 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950 and the department's regulations adopted pursuant thereto.

* * *

§409. Transfer of agencies to Department of Public Safety and Corrections

* * *

C. The following agencies, as defined by R.S. 36:3, are transferred to and hereafter shall be within the Department of Public Safety and Corrections, as provided in R.S. 36:802:

* * *

(8) The Weights and Standards Police Force (~~mobile units only~~) (R.S. 40:1379.8).

* * *

Section 3. R.S. 40:1379.8 is hereby amended and reenacted to read as follows:

§1379.8. Weights and Standards ~~Mobile~~ Police Force

A. The Weights and Standards ~~Mobile~~ Police Force is hereby created within the ~~office of state police of the~~ Department of Public Safety and Corrections, **public safety services**.

B. Members of the Weights and Standards ~~Mobile~~ Police Force **who are commissioned by the deputy secretary** of the Department of Public Safety and Corrections, **public safety services, and** who receive P.O.S.T. certification training, are considered peace officers and shall have the authority to enforce the criminal and traffic laws of the state, apprehend criminals and make arrests, and perform other related duties imposed upon them by the legislature. As peace officers, they shall also have, in any part of the state, the same powers with respect to criminal matters and the enforcement of the law relating thereto as sheriffs, constables, and police

1 officers have in their respective jurisdictions. No member of the Weights and
2 Standards ~~Mobile~~ Police Force shall be authorized to carry a weapon until the
3 member has received P.O.S.T. certification training.

4 Section 4. R.S. 47:511.1(B), (C), (D) and (E), 516(A), (B)(2) and (D) 718(B)(1) and
5 (C) and 812(C) are hereby amended and reenacted to read as follows:

6 §511.1. Temporary permits

7 * * *

8 B. The Weights and Standards Police Force ~~of the Department of~~
9 ~~Transportation and Development~~ is hereby authorized and empowered to issue
10 temporary permits on behalf of the commissioner and to enforce the provisions of
11 this Section.

12 C. If upon inspecting a vehicle or combination of vehicles it is found that it
13 has no temporary permit, the weights and standards police officer or other
14 enforcement officer of the ~~Department of Public Safety~~ **commissioner** may impound
15 the vehicle and may require the operator to purchase forthwith a temporary permit.
16 Two hundred dollars shall be added to the cost of purchasing a temporary permit as
17 a penalty.

18 D. Payments for penalties under this Section shall be remitted to the
19 ~~Department of Transportation and Development~~ **commissioner. Such payment**
20 **shall be made by certified check, money order, or credit card. If payment is**
21 **made by credit card, the payment shall be deemed received by the commissioner**
22 **when tendered and an approval code is obtained from the credit card company**
23 **or credit card processor.**

24 E. All of such penalties collected by the ~~secretary of the Department of~~
25 ~~Transportation and Development~~ **commissioner** shall be paid into the state treasury
26 on or before the twenty-fifth day of each month following their collection and, in
27 accordance with Article VII, Section 9 of the constitution shall be credited to the
28 Bond Security and Redemption Fund. **However, after a sufficient amount of the**
29 **penalties collected by the commissioner is allocated from the fund to pay all**

obligations secured by the full faith and credit of the state within any fiscal year,
the treasurer shall pay an amount equal to the penalties paid into the Bond
Security and Redemption Fund pursuant to the provisions of this Subsection
into the Transportation Trust Fund created under Article VII, Section 27 of the
Constitution of Louisiana.

* * *

§516. Vehicles improperly licensed; weighing, inspections and investigations;
 purchase of proper license required; penalty

A. The commissioner, ~~motor vehicle bureau enforcement officers or the~~
~~division of state police,~~ weights and standards police officers, ~~of the Department of~~
~~Transportation and Development~~ or other proper legal authority, **shall** have the right
 and power at any time and place to investigate, in any lawful manner, and inspect,
 at any time and place, any vehicle, with respect to its registration, license, tax
 payment or other manner or thing contemplated by or provided for in this Chapter.
 To that end the commissioner may select, appoint or designate inspectors, acquire
 the necessary scales or other equipment incident to their functioning, and where
 necessary may cause the owner or driver of any vehicle to move the same or cause
 it to be moved, forthwith, to the nearest scales available in the direction of
 destination.

B. * * *

(2) Twenty-five percent of the annual price of the license or registration shall
 be added to the cost of purchasing the same as a penalty, which shall be in lieu of the
 penalties directed to be imposed by R.S. 47:508. There shall be credited against the
 price of this license or registration the price of the license or registration on the
 vehicle at the time of its unlawful operation. However, in lieu of impoundment and
 immediate purchase of license and registration, a ~~Department of Transportation and~~
~~Development stationary weights and standards enforcement~~ **police** officer may issue
 a violation ticket in the amount of seventy-five dollars, in addition to any overweight
 penalties due as provided by R.S. 32:388, to any operator possessed of an improper

1 Louisiana license and registration.

2 * * *

3 D. Whoever violates his promise to appear, purchase license plate and
4 registration and pay any penalty assessed under Subsections B and C of this section
5 shall be punished by a fine of not more than five hundred dollars, or by
6 imprisonment for not more than ninety days, or both, and the driver's license or
7 license plate shall be forwarded to the ~~Department of Public Safety~~ **commissioner**
8 for suspension, revocation, and cancellation.

9 * * *

10 §718. Gasoline or motor fuel imported in a vehicle's reservoir and used within this
11 state

12 * * *

13 B.(1) In order to enforce the provisions of this Section, the secretary or his
14 authorized representative, or any commissioned officer employed by the ~~office of~~
15 ~~state police or by the Department of Transportation and Development~~ **Department**
16 **of Public Safety and Correction, public safety services,** is empowered to stop any
17 motor vehicle which appears to be operating with gasoline or motor fuel for the
18 purpose of examining the invoices and for such other investigative purposes
19 reasonably necessary to determine whether the vehicle is being operated in
20 compliance with the provisions of this Section.

21 * * *

22 C. All penalties collected for violation of this Section shall be paid to the
23 **deputy** secretary of the Department of Public Safety and Corrections, **public safety**
24 **services,** ~~or the Department of Transportation and Development, whichever agency~~
25 ~~issued the violation ticket,~~ who shall pay said penalties into the state treasury on or
26 before the twenty-fifth day of each month following their collection and, in
27 accordance with Article VII, Section 9 of the Constitution of Louisiana shall be
28 credited to the Bond Security and Redemption Fund. After a sufficient amount is
29 allocated from that fund to pay all obligations secured by the full faith and credit of

1 the state which become due and payable within any fiscal year, the treasurer shall
2 pay an amount equal to the fees paid into the Bond Security and Redemption Fund
3 pursuant to this Subsection into the Transportation Trust Fund.

4 * * *

5 §812. Violations; cargo tank to carburetor connection; operation without
6 speedometer or hub meter; operation without name and address on
7 trucks; invoice

8 * * *

9 C. All specific penalties collected by the Department of Public Safety and
10 Corrections, public safety services, ~~or the Department of Transportation and~~
11 ~~Development~~ in accordance with this Part shall be paid to the deputy secretary of the
12 Department of Public Safety and Corrections, public safety services, ~~or the~~
13 ~~Department of Transportation and Development, whichever agency issued the~~
14 ~~violation ticket~~, who shall pay said penalties into the state treasury on or before the
15 twenty-fifth day of each month following their collection and, in accordance with
16 Article VII, Section 9 of the Constitution of Louisiana, such funds shall be credited
17 to the Bond Security and Redemption Fund.

18 Section 5. R.S. 32:1(93) and 2(B) and (C) are hereby repealed.

19 Section 6. The items which are currently necessary to the duties and responsibilities
20 currently performed by the Department of Transportation and Development for carrying out
21 the functions, duties, and responsibilities of the previously constituted Weights and
22 Standards stationary scales police force are transferred to the Department of Public Safety
23 and Corrections, public safety services. Said transfer of items shall not include the building
24 and property located at 1404 East Highway Drive, Baton Rouge, LA 70802.

25 Section 7. All rules and regulations adopted or permits, licenses, registrations,
26 variances, or orders issued by the effective date of this Act shall continue in full force unless
27 otherwise revoked, repealed, amended, modified, or terminated in accordance with law.
28 However, the deputy secretary for Public Safety Services of the Department of Public Safety
29 and Corrections shall act to adopt such rules and regulations as are necessary to the function

1 of the Weights and Standards Police Force.

2 Section 8. Any legal proceeding, the statutory provisions for which are amended or
3 repealed by the provisions of this Act, to which any agency or office is a party and which
4 is filed, initiated, or otherwise pending before any court or hearing agency on the effective
5 date of this Act, and all documents involved or affected by said legal proceeding shall retain
6 their effectiveness and shall be continued in the name of the former agency. All further legal
7 proceedings shall be in the name of the original party agency and Public Safety Services of
8 the Department of Public Safety and Corrections shall be substituted for the original party
9 agency without the necessity for amendment of any document to substitute the name of the
10 department or the name or title of any subdivision or section of the department.

11 Section 9. All employees engaged in the performance of the functions of the
12 Weights and Standards stationary police force, the provisions of which are amended or
13 transferred by this Act, are hereby assigned to Public Safety Services of the Department of
14 Public Safety and Corrections and, shall insofar as practicable and necessary continue to
15 perform duties heretofore assigned, subject to applicable state civil service laws, rules, and
16 regulations.

17 Section 10. The provisions of this Act shall not be construed in any manner which
18 will impair the contractual or other obligations of any agency, office, or department of this
19 state.

20 Section 11. The provisions of this Act shall not be construed so as to limit the power
21 or authority of any member of the office of state police as provided in R.S. 40:1379.

22 Section 12. Any reference to the Weights and Standards Stationary Police Force or
23 Weights and Standards Mobile Police Force, in any provision of law, including but not
24 limited to provisions of Chapters 4 and 7 of Subtitle II of Title 47 of the Louisiana Revised
25 Statutes of 1950, shall be understood to refer to the Weights and Standards Police Force of
26 Public Safety Services of the Department of Public Safety and Corrections and the Louisiana
27 State Law Institute shall make the necessary statutory changes in order to comply with the
28 provisions of this Section.

29 Section 13. All rules and regulations promulgated by Public Safety Services of the

1 Department of Public Safety and Corrections relative to weight enforcement, payment, and
2 collection procedures shall be adopted in accordance with the provisions of the Louisiana
3 Administrative Procedure Act. Such rules and regulations shall make reference to the
4 Sections or Subsections which they may interpret or apply.

5 Section 14. The Department of Transportation and Development and the Department
6 of Public Safety and Corrections, public safety services, shall report benchmark data
7 annually to the House and Senate committees on transportation, highways, and public works
8 in order to measure the effectiveness and efficiency of the transfer of the fixed-site scale
9 responsibilities from the Department of Transportation and Development to the Department
10 of Public Safety and Corrections, public safety services. Such report shall include any and
11 all benchmark data including but not limited to the number of employees, expenditures, the
12 number and dollar value of violations issued, the number and dollar value of penalties
13 collected and deposited into the state treasury, and appropriations by the legislature to the
14 Department of Public Safety and Corrections, public safety services, to perform such
15 transferred function either by direct appropriation or interagency transfer. The report shall
16 also reflect whether or not the transfer of the fixed-site scale responsibilities from the
17 Department of Transportation and Development to the Department of Public Safety and
18 Corrections, public safety services, achieves a savings of at least twenty-five percent in the
19 second year through the consolidation of the responsibilities as directed by the Commission
20 on Streamlining Government. The first report shall be presented not later than September
21 1, 2010, which report shall include a base benchmark data set as of the effective date of
22 Senate Bill 635 of the 2010 Regular Session of the Louisiana Legislature. Thereafter, the
23 report shall be presented annually not later than September 1, 2011, and not later than
24 September 1 of each fiscal year thereafter.

25 Section 15. This Act shall become effective on July 1, 2010.

The original instrument was prepared by Greg Waddell. The following digest, which does not constitute a part of the legislative instrument, was prepared by Sharon F. Lyles.

DIGEST

Long (SB 635)

Proposed law transfers the Weights and Standards Police Force from the Department of Transportation and Development ("DOTD") to the Department of Public Safety and Corrections ("DPS&C").

Present law defines "commissioner" and "weights and standards stationary scale police officer."

Proposed law defines commissioner as the deputy secretary of the Department of Public Safety and Corrections, public safety services.

Proposed law changes "weights and standards stationary police officer" to "weights and standards police officer."

Present law authorizes the DOTD to enforce certain provisions of law relating to trucks, trailers and semi-trailers.

Present law provides that the DPS&C shall enforce certain provisions of law and the regulations adopted on all highways of this state within its jurisdiction and shall exercise such other power and authority as authorized by law.

Proposed law retains present law and transfers operation and maintenance of all stationary weight enforcement scale locations from DOTD to DPS&C.

Present law provides that DOTD shall have sole authority over the issuance of special permits as provided by law.

Proposed law retains present law and authorizes DPS&C to facilitate the issuance of permits by DOTD's truck permit office to place a vehicle or load in compliance with law.

Proposed law creates the Weights and Standards Police Force ("police force") within DPS&C. Authorizes the police force to enforce certain provisions of law, the access laws and regulations relative to controlled access highways and certain other laws and regulations as determined by the deputy secretary of DPS&C.

Proposed law provides that money from FHWA for maintaining, improving, or upgrading stationary or mobile scales will be used solely for that purpose; provides that DPS&C is responsible to maintain buildings and grounds and stationary scales; provides DOTD is responsible to maintain roadways and parking lots at stationary scales.

Proposed law provides for collection procedure; provides violations are penalties, rather than fines, to reflect civil nature; provides for notice of violation and civil penalty or warning to responsible party within 30 days of violation; provides 45 day period to pay the penalty or to request an administrative hearing; provides for payment by certified check, money order, or credit card; credit card payments are deemed received when approval code is obtained; provides for dismissal of violation if commissioner fails to issue a notice of violation to the responsible party in 30 calendar days of date of violation; extends notice period for 60 calendar days due to data system failure by act of God or intentional act of sabotage or during state of emergency declared by governor; provides for appeal of findings of an administrative law judge in state district court of proper venue; provides for posting of

unpaid penalties after 45 days on commissioner's website until paid and notice to office of motor vehicles who shall not renew vehicle registration until penalties and fees are paid; provides for suspension of driver's license where driver is the responsible party; provides for notice of suspension of license within 30 days unless all penalties and fees are paid; provides for \$50 fee to OMV to cover administrative cost; provides motor carriers shall not be responsible for driver violations.

Proposed law provides for DPSC to promulgate rules and oversight of rules by the House and Senate Committees on Transportation, Highways, and Public Works.

Proposed law provides for annual reports to House and Senate Transportation Committees of benchmark data to determine whether transfer of function achieves savings of at least twenty-five percent as directed by Commission on Streamlining Government.

Effective July 1, 2010.

(Amends R.S. 32:1(1),(10) and (93.1), 2(D) and (E), 3(C), 388(A)(3), (B)(1)(a)(intro para), (B)(4)(a), (C)(3), (F) and (G), 388.1, 389, 390.23(A) and 392(A)(1), and R.S. 36:408(B)(3) and 409(C)(8), and R.S. 40:1379.8, and R.S. 47:511.1(B), (C),(D) and (E), 516(A), (B)(2), and (D), 718(B)(1) and (C) and 812(C); repeals R.S. 32:1(93), 2(B) and (C))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill.

1. Retains sole authority in DOTD to issue special permits per R.S. 32:287 and authorizes DPS&C to facilitate issuance of permits by DOTD truck permit office to place a vehicle or load in compliance with law.
2. Provides that money from FHWA for maintaining, improving, or upgrading stationary or mobile scales will be used solely for that purpose.
3. Provides that DPS&C is responsible to maintain buildings and grounds and stationary scales; provides DOTD is responsible to maintain roadways and parking lots at stationary scales.
4. Changes "fine" to "penalty" to reflect its civil nature.
5. Provides for collection procedure; provides for notice of violation and civil penalty or warning to responsible party within 30 days of violation; provides 45 day period to pay the penalty or to request an administrative hearing; provides for payment by certified check, money order, or credit card; credit card payments are deemed received when approval code is obtained.
6. Provides for rules and oversight of rules by the House and Senate Committees on Transportation, Highways, and Public Works.
7. Provides for dismissal of violation if commissioner fails to issue a notice of violation to the responsible party in 30 calendar days from the date of violation; extends notice period for 60 calendar days in case of data system failure by act of God or intentional act of sabotage or for state of emergency declared by governor.
8. Provides for appeal of findings of an administrative law judge in state district court of proper venue.

9. Provides for posting of unpaid penalties after 45 days on commissioner's website until paid and notice to office of motor vehicles who shall not renew vehicle registration until penalties and fees are paid.
10. Provides for suspension of driver's license where driver is the responsible party; provides for notice of suspension of license within 30 days unless all penalties and fees are paid; provides for \$50 fee to OMV to cover administrative cost.
11. Provides motor carriers shall not be responsible for driver violations.
12. Provides for annual reports to House and Senate Transportation Committees of benchmark data to determine whether transfer of function achieves savings of at least twenty-five percent.